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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 **BRADLEY M. HIXON,**

15 Plaintiff,

16 v.

17 **Correctional Officer J. CRUZEN,**

18 Defendant.
19

C 07-6078 WHA

**DECLARATION OF E.
MEDINA IN SUPPORT OF
DEFENDANT'S MOTION TO
DISMISS**

20 I, E. MEDINA, declare as follows:

21 1. I am employed by the California Department of Corrections and Rehabilitation
22 (CDCR) as an Inmate Appeals Coordinator at Salinas Valley State Prison (Salinas Valley). My
23 job duties include processing inmate appeals (Form CDC 602), assigning appeals to the
24 appropriate staff, and monitoring and maintaining the computer database in the Salinas Valley
25 Inmate Appeals Office. I am competent to testify to the matters set forth in this declaration, and
26 if called up to do so, I would and could so testify. I submit this declaration in support of
27 Defendant's Motion to Dismiss.

28 2. Form CDC 602 appeals that meet the criteria for review under the California Code of

Decl. of E. Medina in Support Mot. to Dismiss

Hixon v. Cruzen
C 07-6078 WHA

1 Regulations, and have been submitted for review, are recorded in the Inmate Appeals Office
2 computer database. The recording is made at or near the time the inmate appeal is received by
3 me or another employee with personal knowledge of the appeal process. The database is kept in
4 the course of regularly conducted business activity and every effort is made to maintain the
5 accuracy and integrity of each record maintained.

6 3. The regular custom and practice of the Inmate Appeals Office at Salinas Valley is to
7 assign an institutional log number to the Form CDC 602 appeal and record the log number in the
8 Inmate Appeals Office computer database. The log number recording is made at or near the time
9 the inmate appeal is received by me or another employee with personal knowledge of the appeal
10 process.

11 4. I have searched the Salinas Valley Inmate Appeals Office's computer database for all
12 records of appeals filed by inmate Bradley Hixon, CDCR number T-78115.

13 5. Attached as Exhibit A is a true and correct copy of the computer printout from Salinas
14 Valley's Inmate Appeals Office showing Inmate Hixon's appeals history through February 2008.
15 The inmate appeals are tracked by the status reports in Exhibit A.

16 6. Attached as Exhibit B is a true and correct copy of inmate appeal institutional log
17 number SVSP-D-07-05091. This appeal was received by the inmate appeals office on November
18 27, 2008 as a staff complaint. Any CDC 602 form submitted as a staff complaint bypasses the
19 informal level of review under Cal. Code Regs. Titl. 15, § 3084.5(g). At the first level of review,
20 the appeal bearing institutional log number SVSP-D-07-05091 was partially granted.

21 7. The appeal bearing institutional log number SVSP-D-07-05091 was not submitted by
22 Hixon at the second level of review.

23 8. Attached as Exhibit C is a true and correct copy of the Rules Violation Report, A07-11-
24 0045, dated November 11, 2007, against Hixon for threats on staff. Hixon was found guilty of
25 the Rules Violation.

26 //

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1 I declare under penalty of perjury that the foregoing is true and correct. Executed at
2 Soledad, California, on May 6, 2008.

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5 E. MEDINA
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EXHIBIT A

Salinas Valley State Prison

02/07/2008

CALIFORNIA DEPARTMENT OF CORRECTIONS
Inmate/Parolee Appeals Tracking System - Level I & II

Appeal Listing

Sorted By: CDC Number

CDC Number	Appellant Name	Area Of Origin	Issue	Log Number	Group Appeal
T78115	HIXON, B	FAC. A 3	STAFF COMPLAINTS	SVSP-A-07-01237	
Level I Review: Received: 03/12/2007 Due: 04/23/2007 Completed: 04/27/2007 Disposition: GRANTED IN PART					
T78115	HIXON, B	FAC. A 3	MEDICAL	SVSP-A-	
T78115	HIXON, B	FAC. A 3	PROGRAM	SVSP-A-	
T78115	HIXON, B	FAC. A 3	PROGRAM	SVSP-A-07-01633	
Level I Review: Received: 04/11/2007 Due: 05/23/2007 Completed: 04/27/2007 Disposition: WITHDRAWN					
T78115	HIXON, B	FAC. A 4	CUSTODY/CLASS.	SVSP-A-	
T78115	HIXON, B	FAC. A 3	LEGAL	SVSP-A-	
T78115	HIXON, B	FAC. A 3	MEDICAL	SVSP-A-07-03799	
Level I Review: Received: 08/23/2007 Due: 10/05/2007 Completed: 10/05/2007 Disposition: GRANTED IN PART					
T78115	HIXON, B	FAC. D 8	STAFF COMPLAINTS	SVSP-D-07-05091	
Level I Review: Received: 11/27/2007 Due: 01/10/2008 Completed: 01/22/2008 Disposition: GRANTED IN PART					
T78115	HIXON, B	FAC. D 8	PROPERTY	SVSP-D-07-05095	
Level II Review: Received: 11/27/2007 Due: 12/04/2007 Completed: 12/05/2007 Disposition: GRANTED IN PART					
T78115	HIXON, B	FAC. D 2	DISCIPLINARY	SVSP-D-07-05410	
Level II Review: Received: 12/19/2007 Due: 02/04/2008 Completed: 01/08/2008 Disposition: DENIED					
T78115	HIXON, B	FAC. D 8	LEGAL	SVSP-D-	
Total: 11					

EXHIBIT B

INMATE/PAROLEE

APPEAL FORM

CDC 602 (12/87)

Location Institution Code Region

Case No.

Category

1. _____

1. _____

2. _____

2. _____

You may appeal any policy, action or decision which has significant adverse affect upon you. With the exception of Serious 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeal Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
HIXON	T 78115	N/A	D8-131

A. Discuss Problem: 3391 (A) on 11/11/07 C/O J Cruzen made some discrimination towards me. By calling me a "Faggot Ass Bitch" He also stated to me that he will make sure that I go to Ad-seg w/a 115 so I can't go back to this building. (2) He said to me that he was going to use false documentation on me with Sgt Metcalfe so that I can't go back to a yard. Cause they don't like homosexuals on that yard that's why they're trying to get rid of all of us. Cause we're nasty and worthless this is the 3rd time I send out but the other two didn't work. C/O J Cruzen has made different threats towards me. Since I been located in his unit which is Building 15.

A. Action requested: (1) For C/O J Cruzen to be reprimanded in situations like this (2) For this to be brought to justice (3) To not use reprisal against me (4) For me to see a doctor for my stress and distress (5) For this to be placed into his file (6) For me to be transferred out of the institution due to C/O J Cruzen's threats towards me. (7) and to have a restraining order against him.

Inmate/Parolee Signature: [Signature] Date Submitted: 11/15/07

B. INFORMAL LEVEL (Date Received _____)

Staff Response: _____

Staff Signature: _____ Date Returned to Inmate: _____

C. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigators Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for procession within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control Form BC-1E, Inmate Claim

CDC Appeal Number: _____

cc: I/M Hixon T 78115
warden Evans susp

Internal
Affairs

Exhibit B

EXHIBIT C

804 to Records:
STATE OF CALIFORNIA

Date: 11-11-07

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT

FPRD

CDC NUMBER T-78115	INMATE'S NAME HIXON	RELEASE/BOARD DATE 09/21/2019	INST. SVSP	HOUSING NO. A2-112L	LOG NO. A07-11-0045
VIOLATED RULE NO(S): CCR S3005(c)		SPECIFIC ACTS Threat On Staff	LOCATION Fac. 'A' Bldg. #2	DATE 11/11/07	TIME 1435

CIRCUMSTANCES:

On 11/11/07, while I was assigned as Facility A-2 Floor Officer #1, I was approached by Inmate HIXON (T-78115, A2112L), who began questioning the Medical Shower Program for Inmates with Medical Shower Chronos issued to them by medical. I reminded Inmate HIXON that the Yard/Tier Rotation for today (11/11/07), had been his day for Day Room therefore; he had been allowed the opportunity to shower and had elected to play cards instead of taking his shower. Inmate HIXON said, "If I am not going to get shower then I am going to swing on somebody. It isn't a threat either." Due to Inmate HIXON staring straight at me when he made the above statement and in an apparent agitated mental state which was reflected in his (Inmate HIXON), elevated tone of voice, and clenching of his fists, he was placed into Mechanical Restraints (handcuff) and escorted to the Facility Health Services Annex and placed into a Temporary Holding Cell. Inmate HIXON'S actions left me concerned with his threat and I felt he intended to carry out his statement. I am requesting Inmate HIXON be placed into Administrative Segregation, considered for transfer to an Alternate Level IV Sensitive Needs Yard (SNY) where he won't be on a Facility where I am assigned on a daily basis. This would remove the possibility of Inmate HIXON being provided the opportunity to carry out his threat.

Inmate HIXON is a participant in the Mental Health Services Delivery System, at the COOMS level of care. Inmate HIXON is aware of this report.

REPORTING EMPLOYEE (Typed Name and Signature) J. Cruzen, Correctional Officer	DATE 11-20-07	ASSIGNMENT A-2 Floor Officer #1	RDO'S S/S
REVIEWING SUPERVISOR'S SIGNATURE D. Holloway, Sgt.	DATE 11-20-07	<input type="checkbox"/> INMATE SEGREGATED-PENDING HEARING	
CLASSIFIED BY (Typed Name and Signature) T. Hanks	DATE 11-20-07	HEARING REFERRED TO <input type="checkbox"/> HO <input checked="" type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC	

COPIES GIVEN INMATE BEFORE HEARING

<input checked="" type="checkbox"/> CDC 115 A07-11-0045	BY: (STAFF'S SIGNATURE) V. Lya	DATE 11/20/07	TIME 910	TITLE OF SUPPLEMENT
<input type="checkbox"/> INCIDENT REPORT LOG NUMBER	BY: (STAFF'S SIGNATURE)	DATE	TIME	BY: (STAFF'S SIGNATURE)

HEARING

Plea: Not Guilty.

Findings: Inmate HIXON was found Guilty of CCR S3005(c), specifically "Threat On Staff" a Division "E" offense. This finding is based on the preponderance of evidence presented at the hearing which does substantiate the charge. The evidence presented at the hearing included: (SEE CDR 115-C)

Disposition: Inmate HIXON assessed 60 days forfeiture of credits in accordance with a Division "E" offense per CCR S3323.

Additional Disposition: Inmate HIXON was counseled, warned and reprimanded.

Classification Referral: Inmate HIXON is referred to IOC for program review.

REFERRED TO ☐ CLASSIFICATION ☐ BPT/NAEA

ACTION BY: (TYPED NAME) R.A. Kessler, Correctional Lieutenant	SIGNATURE [Signature]	DATE 2/04/07	TIME 1220
REVIEWED BY: (SIGNATURE) D.M. Manrel, Captain	DATE 12/17/07	CHIEF DISCIPLINARY OFFICER'S SIGNATURE R. Grounds, C.D.O.	DATE 12/17/07
<input checked="" type="checkbox"/> COPY OF CDC 115 GIVEN INMATE AFTER HEARING	BY: (STAFF'S SIGNATURE) V. Lya	DATE 12/18/07	TIME 1000

CDC 115 (7/88)

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE 2 OF 3

CDC NUMBER T-78115	INMATE'S NAME HIXON	LOG NUMBER A07-11-0045	INSTITUTION SVSP	TODAY'S DATE 12/04/07
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER			

Hearing: 12/04/07

Time: 1220 hours

Any Postponement Explained: None

Inmate's Health: Inmate HIXON stated his health was good. **MHS:** Inmate HIXON is a participant in the Mental Health Services Delivery System, at the Correctional Clinical Case Management System level of care. The circumstances of the RVR do not indicate that Inmate HIXON exhibited any bizarre behavior that would raise concerns about his mental health. At the hearing, Inmate HIXON did not demonstrate any strange, bizarre, or irrational behavior. Based on this and pursuant to recent changes approved by the U.S. District Court on COLEMAN, a mental health assessment was not initiated.

Staff Assistant (SA): Inmate HIXON'S TABE score is below 4.0. Inmate HIXON waived assignment of the Staff Assistant by placing his signature in the appropriate area of the CDCR 115-A. Inmate HIXON explained his understanding of the charges/process/options/instructions to the Senior Hearing Officer's (SHO) satisfaction. Inmate HIXON read the RVR aloud and was able to demonstrate his understanding of the RVR and the disciplinary process through discussion with the SHO.

Investigative Employee (IE): Inmate HIXON waived assignment of the Investigative Employee by placing his signature in the appropriate area of the CDCR 115-A. SHO read and considered the Investigative Employee Report during Inmate HIXON'S RVR hearing.

Date of Discovery: 11/11/07

Initial RVR copy issued on: 11/22/07

Hearing started on: 12/04/07

Last document issued to inmate on: 11/22/07

D.A. postponed date: None

D.A. results issued date: None

Time Constraints: Inmate HIXON acknowledged receipt of all reports to be used in evidence and was ready to proceed with the hearing. Copies of all reports were issued more than 24 hours prior to the hearing. The disciplinary was served on Inmate HIXON within 15 days of discovery and the hearing has been held within 30 days. All time constraints have been met.

D.A. Referral: None Evidence Requested or Used: None External/Outside Evidence: None Video Tape Evidence: N/A

Inmate Plea and Statement: Inmate HIXON entered a plea of **Not Guilty** and stated, "I Inmate HIXON (T-78115) approached Facility 'A' Building #2 Floor Staff C/O J. Cruzen to ask him what's up with my daily Medical Shower, which at this time C/O Cruzen deliberately denied me my Medical Shower because he stated that I had day-room. But I tried to inform him that other Inmates were denying me the Access of Showering due to they was holding the Showers for their Homeboys who was next in line and C/O J. Cruzen response was oh well try to get in anyway. I responded to C/O Cruzen by saying that if one of these Inmates don't allow me to shower then I'll swing on one of them due to them taken advantage of my Transgender way's. This threat was not meant nor directed toward any Staff Members. The body of he RVR 115 does not substantiate the "Prima facie" evidence as charge for threat on Staff.. This RVR should be reduced down to a lesser charge in the Interest of Justice."

Witnesses Requested or Provided: None Witness Testimony at Hearing: None Confidential Information: None

Findings: Inmate HIXON is found **Guilty** of "Threat On Staff." This finding is based upon the following preponderance of evidence:

R.A. Kessler, Correctional Lieutenant

CONTINUED SEE CDCR 115-C

SIGNATURE OF WRITER <i>R.A. Kessler</i>		DATE SIGNED 12/4/07	
<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	GIVEN BY (Staff's Signature) <i>V. [Signature]</i>	DATE SIGNED 12/18/07	TIME SIGNED 1000

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

PAGE 3 OF 3

RULES VIOLATION REPORT - PART C

CDC NUMBER T-78115	INMATE'S NAME HIXON	LOG NUMBER A07-11-0045	INSTITUTION SVSP	TODAY'S DATE 12/04/07
<input type="checkbox"/> SUPPLEMENTAL <input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER				

A: The information contained in the RVR Log# A07-11-0045, authored by Correctional Officer J. Cruzen, wherein he states in part, "While I was assigned as Facility A-2 Floor Officer #1, I was approached by Inmate HIXON (T-78115, A2-112L), who began questioning the Medical Shower Program for Inmates with Medical Shower Chronos issued to them by medical. I reminded Inmate HIXON that the Yard/Tier Rotation for today (11/11/07), had been his day for Day Room therefore; he had been allowed the opportunity to shower and had elected to play cards instead of taking his shower. Inmate HIXON said, "If I am not going to get shower then I am going to swing on somebody. It isn't a threat either." Due to Inmate HIXON staring straight at me when he made the above statement and in an apparent agitated mental state which was reflected in his (Inmate HIXON), elevated tone of voice, and clenching of his fists, he was placed into Mechanical Restraints (handcuff) and escorted to the Facility Health Services Annex and placed into a Temporary Holding Cell. Inmate HIXON'S actions left me concerned with his threat and I felt he intended to carry out his statement. I am requesting Inmate HIXON be placed into Administrative Segregation, considered for transfer to an Alternate Level IV Sensitive Needs Yard (SNY) where he won't be on a Facility where I am assigned on a daily basis. This would remove the possibility of Inmate HIXON being provided the opportunity to carry out his threat.

B: Inmate HIXON pled Not Guilty during the hearing and stated; "I Inmate HIXON (T-78115) approached Facility 'A' Building #2 Floor Staff C/O J. Cruzen to ask him what's up with my daily Medical Shower, which at this time C/O Cruzen deliberately denied me my Medical Shower because he stated that I had day-room. But I tried to inform him that other Inmate's were denying me the Access of Showering due to they was holding the Showers for their Homeboys who was next in line and C/O J. Cruzen response was on well try to get in anyway. I responded to C/O Cruzen by saying that if one of these Inmates don't allow me to shower then I'll swing on one of them due to the taken advantage of my Transgender way's. This threat was not meant nor directed toward any Staff Members. The body of he RVR 115 does not substantiate the "Prima facie" evidence as charge for threat on Staff.. This RVR should be reduced down to a lesser charge in the Interest of Justice."

Conclusion: A finding of guilty is based on the information in the RVR. Based on the aforementioned, SHO finds there is sufficient evidence to substantiate the charge. Therefore, Inmate HIXON is found guilty of Threat On Staff.

Appeal Rights: Inmate HIXON was advised of his rights to appeal and also the policy and procedure of appeal. Inmate HIXON was advised that he will receive a completed copy of the RVR upon final audit by the Chief Disciplinary Officer. Inmate HIXON has 15 days from receipt of his final copy to file an appeal.

R.A. Kessler, Correctional Lieutenant		DATE SIGNED 12/4/07	
SIGNATURE OF WRITER <i>R.A. Kessler</i>		TIME SIGNED 11:00	
<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	GIVEN BY (Staff's Signature) <i>V. Ma</i>	DATE SIGNED 12-18-07	TIME SIGNED 11:00



SERIOUS RULES VIOLATION REPORT

CDC NUMBER T-78115	INMATE'S NAME HIXON	VIOLATED RULE NO(S). CCR S3005 (c)	DATE 11/11/07	INSTITUTION SVSP	LOG NO. A07-11-0045
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REFERRAL FOR FELONY PROSECUTION IS LIKELY IN THIS INCIDENT ☐ YES ☒ NO

POSTPONEMENT OF DISCIPLINARY HEARING

<input type="checkbox"/> I DO NOT REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE	DATE
<input type="checkbox"/> I REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE <i>MA</i>	DATE
DATE NOTICE OF OUTCOME RECEIVED	DISPOSITION	
<input type="checkbox"/> I REVOKE my request for postponement.	INMATE'S SIGNATURE	DATE

STAFF ASSISTANT

STAFF ASSISTANT	INMATE'S SIGNATURE	DATE
<input type="checkbox"/> REQUESTED <input checked="" type="checkbox"/> WAIVED BY INMATE	<i>[Signature]</i>	11/22/07
<input type="checkbox"/> ASSIGNED	DATE	NAME OF STAFF
<input type="checkbox"/> NOT ASSIGNED	REASON	

INVESTIGATIVE EMPLOYEE

INVESTIGATIVE EMPLOYEE	INMATE'S SIGNATURE	DATE
<input type="checkbox"/> REQUESTED <input checked="" type="checkbox"/> WAIVED BY INMATE	<i>[Signature]</i>	11/22/07
<input type="checkbox"/> ASSIGNED	DATE	NAME OF STAFF
<input type="checkbox"/> NOT ASSIGNED	REASON	

EVIDENCE / INFORMATION REQUESTED BY INMATE:

WITNESSES

WITNESSES REQUESTED AT HEARING (IF NOT PRESENT, EXPLAIN IN FINDINGS)					
<input type="checkbox"/> REPORTING EMPLOYEE	<input type="checkbox"/> STAFF ASSISTANT	<input type="checkbox"/> INVESTIGATIVE EMPLOYEE	<input type="checkbox"/> OTHER	<input checked="" type="checkbox"/> NONE	
WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)			WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)		
	GRANTED	NOT GRANTED		GRANTED	NOT GRANTED
<i>N/A</i>	<input type="checkbox"/>	<input type="checkbox"/>	<i>N/A</i>	<input type="checkbox"/>	<input type="checkbox"/>

INVESTIGATIVE REPORT: Investigative Employees must interview the inmate charged, the reporting employee, and any others who have significant information, documenting the testimony of each person interviewed. Review of files, procedures, and other documents may also be necessary.

<input checked="" type="checkbox"/> COPY OF CDC 115-A GIVEN INMATE	BY: (STAFF'S SIGNATURE) <i>[Signature]</i>	INVESTIGATOR'S SIGNATURE <i>[Signature]</i>	DATE 12-18-07
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